

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

USA TECHNOLOGIES, INC.	:	
	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	
v.	:	NO.: 09-3899
	:	
JOHN DOE AND JANE DOE	:	
ANONYMOUS INTERNET WEBSITE	:	
BLOGGERS OPERATING AS	:	
MICHAEL_MOORE_IS_FAT AND :	:	
STOKKLERK	:	
Defendants.	:	

MOTION FOR ISSUANCE OF SUBPOENAS DUCES TECUM DIRECTED TO YAHOO!
INC. PRIOR TO F.R.C.P.26(f) CONFERENCE

Plaintiff USA Technologies, Inc. (hereinafter "USAT"), herein requests this Court to allow service of a Subpoena *Duces Tecum* directed to Yahoo! Inc. (hereinafter "Yahoo!") prior to a F.R.C.P.26(f) conference, and avers in support thereof as follows:

1. USAT is a Pennsylvania corporation with its principal place of business at 100 Deerfield Lane, Suite 140, Malvern, PA 19355.

2. USAT is a public company whose stock is traded on the National Association of Securities Dealers, Inc.'s Over the Counter Bulletin Board under the symbol "USTT".

3. Yahoo! is a business operating an Internet website (www.yahoo.com) which includes separate pages for public companies. Each such site provides stock quote information as well as a message board on which individuals can post messages concerning the particular public company or its stock.

4. The identity of a particular individual posting a message on the Yahoo! USAT message board is unknown to the public as the member is identified only by his or her screen name.

5. Defendants John Doe and Jane Doe are anonymous website bloggers operating as "Michael_moore_is_fat" and "stokklerk".

6. "Michael_moore_is_fat" and "stokklerk", anonymous website bloggers, have published false and defamatory messages about USAT and its officers on the Yahoo.com Finance webpage for USAT, as set forth in USAT's complaint which is attached hereto as Exhibit "A".

10. At this time, USAT does not know the identities of the individual(s) posting under the names "Michael_moore_is_fat" and "stokklerk", and USAT can only learn the identities by obtaining information from Yahooo!.

11. As set forth in the attached Affidavit of USAT's Attorney Margaret Sherry Lurio (hereinafter "Lurio Affidavit"), Yahoo! will not provide any information as to the identities of individuals posting messages absent a Subpoena or court order. Ms. Lurio's Affidavit is attached hereto as incorporated by reference as Exhibit "B".

12. USAT seeks leave to serve a Subpoena on Yahoo! prior to the conference provided for in F.R.C.P. 26(f) since USAT can only learn the identity of the individuals posting the messages in question by conducting this initial discovery.

13. The proposed Subpoena, attached hereto as incorporated by reference as Exhibit "C", seeks disclosure of identifying information for the individuals who have posted the messages at issue.

14. As set forth in the Lurio Affidavit, once Yahoo! receives a subpoena requesting information about the identity of an anonymous poster on the Yahoo! website, Yahoo! provides notice to the individuals (as they have identified themselves to Yahoo! when setting up their account), and Yahoo! advises the users that they may object to release of the information.

15. USAT believes and avers that there is a sufficient basis for causes of action based on securities law violations and defamation. The involved postings contain false and defamatory information, the postings could affect the price of the public stock, the communications apply to USAT, a recipient would understand their defamatory meaning applies to USAT, special harm resulted to USAT from the publication, and no privilege applies.

16. Without access to the information which USAT seeks to learn through the proposed Subpoena, USAT has no adequate remedy against the individual(s) known as "Michael_moore_is_fat" and "stokklerk".

WHEREFORE USA Technologies, Inc. respectfully requests this court to provide leave to Plaintiff USA Technologies, Inc. to serve a subpoena *duces tecum* on Yahoo! Inc. prior to the F.R.C.P.

26(f) conference for information for the individual(s) operating as "Michael_moore_is_fat" and "stokklerk".

LURIO & ASSOCIATES, P.C.

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